

# GOVERNMENT PRINTING OFFICE (GPO)

## OVERVIEW

The Government Printing Office (GPO) prints, binds, and distributes the publications of the Congress, as well as the executive branch of the federal government. The Public Printer, who serves as head of the agency, is appointed by the President with the advice and consent of the Senate.

Although GPO is a part of the legislative branch, most GPO employees are included in the federal competitive service, and employment laws that apply generally in the executive branch apply at GPO. These rights and protections are somewhat similar to those afforded GAO employees except that, unlike GAO, which has its own personnel management system, including the Personnel Appeals Board, GPO is subject to direct regulation by the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), and other executive branch agencies that regulate executive branch employment.

The federal sector laws and procedures applicable at GPO provide a multiplicity of avenues for administrative consideration of employee complaints. All GPO employees can appeal discrimination complaints to the EEOC, and can apply to the FLRA in case of labor-management disputes. Furthermore, certain kinds of employment actions taken by GPO are subject to appeal to the MSPB, including appealable adverse actions (removals, suspensions for more than 14 days, reductions in grade or pay, or furloughs of 30 days or less) and performance-based actions (removals or reductions in grade).<sup>1</sup>

In addition, GPO has established several internal administrative mechanisms to hear and resolve employee grievances. Over seventy-five percent of GPO employees are covered by collective bargaining agreements and may use the negotiated grievance procedures provided in these agreements.<sup>2</sup> When an employee submits a grievance under these procedures, the matter is presented to the agency and, if necessary, submitted to binding arbitration. Exceptions to the arbitral award may be taken to the FLRA,<sup>3</sup> or, if the grievant objects to an appealable adverse action or performance-based action by the agency, judicial review of the arbitral award may be

---

<sup>1</sup> See 5 U.S.C. 4303, 7512, 7513.

<sup>2</sup> See, e.g., Article VII, Master Labor-Management Agreement between Joint Council of Unions, GPO and the GPO, effective April 25, 1988; see generally, 5 U.S.C. 7121-7122.

<sup>3</sup> See 5 U.S.C. 7122 and 7703.

obtained in the United States Court of Appeals for the Federal Circuit.<sup>1</sup> GPO has also established a process for handling and resolving complaints of discrimination, and a general administrative grievance procedure under which non-members of bargaining units may present other kinds of grievances to GPO management.<sup>2</sup>

---

<sup>1</sup> See 5 U.S.C. 7121(f).

<sup>2</sup> See GPO Instruction 680.1B, CH-1 (July 25, 1985).

## ANTI-DISCRIMINATION LAWS

### Substantive Rights

GPO, like GAO, is covered under section 717 of Title VII, section 15 of the Age Discrimination Employment Act (ADEA), the Equal Pay Act (EPA), and section 509 of the ADA,<sup>1</sup> and is not subject to section 501 of the Rehabilitation Act.<sup>2</sup> The substantive rights and protections afforded GPO employees under these laws therefore parallel those afforded GAO employees.

GPO is also included under provisions of civil service statutes that forbid prohibited personnel practices.<sup>3</sup> It is a prohibited personnel practice for a GPO employee who has personnel authority<sup>4</sup> to discriminate in violation of Title VII, the ADEA, or the EPA.<sup>5</sup> Prohibited personnel practices also forbid retaliation for the exercise of certain appeal and “whistleblower” rights with respect to any applicable law.<sup>6</sup>

---

<sup>1</sup> 42 U.S.C. 2000e-16 (Title VII); 29 U.S.C. 633a (ADEA); 29 U.S.C. 206(d) (EPA); 42 U.S.C. 12209 (ADA). Even before enactment of the CAA, most GPO employees were covered under Title VII, the ADEA, and the EPA, because these laws covered units of the legislative branch “having positions in the competitive service,” and most GPO employees are in the competitive service. However, sections 201(c)(1) and 203(d) of the CAA amended Title VII, the ADEA, and the FLSA (of which the EPA is a part) to include GPO by name, and all of its employees, under the coverage of these laws. GPO was included under the coverage of section 509 of the ADA as originally enacted in 1990.

<sup>2</sup> GPO has advised that section 501 of the Rehabilitation Act, 29 U.S.C. 791(b), applies to the executive branch, and, as an agency in the legislative branch, it is not included.

<sup>3</sup> 5 U.S.C. 2302(a)(2)(C).

<sup>4</sup> *I.e.*, an employee “who has authority to take, direct others to take, recommend, or approve any personnel action.” 5 U.S.C. 2302(b)(1).

<sup>5</sup> 5 U.S.C. 2302(b)(1)(A)-(C). However, according to GPO, the agency is not covered by the prohibited personnel practice that forbids discrimination “on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973.” 5 U.S.C. 2302(b)(1)(D).

<sup>6</sup> The prohibited personnel practices include discrimination because of the exercise of appeal, complaint, or grievance right granted by any law, assisting any other individual in the exercise of such a right, or for refusing to obey an unlawful order. 5 U.S.C. 2302(b)(9). Prohibited personnel practices also include discrimination for disclosure of information reasonably

(continued...)

## **ANTI-DISCRIMINATION LAWS**

### **EVALUATION**

#### **Substantive Rights and Protections.**

At GPO, as at GAO, the basic prohibitions against discrimination under the anti-discrimination laws (title VII, ADEA, ADA and EPA) are generally the same as those afforded other federal sector employees, those in the private sector, and other legislative branch employees covered under the CAA.

#### **Procedures**

The administrative and judicial procedures available to GPO employees with discrimination complaints are generally the same as those available to executive branch employees.

##### **Administrative**

The procedures for GPO employees are similar to those at GAO, but are significantly different from those under the CAA. Executive branch procedures offer multiple stages of fact finding, decision making, and review, which can be lengthier than under the CAA, and the employing agency plays a much greater role in the initial counseling, mediation, investigation and decision phases.

The EEO complaints procedures available to GPO employees include mechanisms for investigating complaints and taking enforcement action. GPO's EEO Service investigates individual complaints, the EEOC monitors compliance with final decisions of the Commission, and the Office of Special Counsel has authority for taking enforcement actions in discrimination cases, including investigation with or without a charge, seeking corrective action or stays, and disciplinary action. Although similar enforcement authorities are available in the private sector at the EEOC, there is no comparable authority under the CAA, which establishes a dispute resolution process that provides confidential counseling and mediation and an independent administrative hearing.

GPO employees with discrimination complaints generally are afforded access to independent administrative tribunals to the same extent as executive branch employees. Final GPO decisions may be appealed to the EEOC, and certain complaints may be reviewed by the MSPB or the FLRA prior to EEOC review. GPO employees also enjoy the protection of the Office of Special Counsel, which investigates and prosecutes allegations of EEO violations government-wide. Unlike executive branch employees, however, GPO employees may not obtain EEOC review of complaints alleging discrimination on the basis of disability. Other legislative branch employees covered by the CAA may obtain review of any discrimination complaint by the independent Office

of Compliance Board, but the General Counsel of the Office of Compliance has no investigatory or prosecutorial authority in EEO cases.

### **Judicial**

Employees at GPO have the same right as executive branch employees to file a civil action under anti-discrimination laws at various points after filing an administrative complaint or, in the case of an ADEA or EPA claim, as an alternative to filing an administrative complaint. Even after exhausting administrative remedies, these employees retain the right to file a civil action in federal district court and have a trial *de novo*. A jury trial is available in cases under Title VII and the ADA, but probably not under the ADEA and EPA.

For private sector employees and covered legislative branch employees under the CAA, the right to file a civil action and request a jury trial is generally available in discrimination cases. However, under the CAA, a covered employee who elects to pursue an administrative rather than judicial complaint may obtain only appellate judicial review in the Court of Appeals for the Federal Circuit, after exhausting administrative remedies.

GPO employees also enjoy broad protections against retaliation for asserting rights under anti-discrimination laws, similar to the protections available to employees of GAO and the executive branch. GPO employees may seek administrative remedies under the discrimination complaints procedure or negotiated grievance procedure at GPO, or under civil service law. They can also gain access to federal district court in claims of retaliation under Title VII and EPA, but the law is uncertain with respect to ADEA and ADA violations. By comparison, covered legislative branch employees are protected by section 207 of the CAA, which prohibits retaliation for the exercise of rights with respect to any CAA law, including any of the anti-discrimination laws, and private sector employees are protected under specified statutory anti-retaliation provisions in these laws.

### **Relief**

Most types of relief available for discrimination violations are the same for GPO employees as for other legislative branch employees covered under the CAA, as well as executive branch and private sector employees. However, two kinds of damages are available to private sector employees and employees covered under the CAA that are not available to GPO or executive branch employees: (a) compensatory damages for discrimination involving race, ancestry, and ethnicity, under 42 U.S.C. 1981; and (b) liquidated damages in the case of a willful violation of the ADEA, in an amount equal to the amount owing as a result of the violation.

In addition, certain punitive damages and penalties are available against private sector employers in title VII and ADA cases that are not available against federal government employers, including employing offices under the CAA, in the executive branch, and GPO.

### **Timeliness in Resolving Discrimination Complaints**

Commenters expressed concern about the slowness with which they believe GPO processes discrimination cases.

The EEOC has reported that the average case processing time by GPO was 620 days for cases closed in FY94, and 940 days for cases closed in FY93.<sup>1</sup> Of the more than 80 federal agencies included in the EEOC survey, GPO was in the 15%, with the longest average case processing times.

---

<sup>1</sup> The Equal Employment Opportunity Commission issues annual reports on case handling in the federal sector agencies over which it exercises jurisdiction. In Fiscal Year (FY) 1994, the EEOC reported that the average processing time at GPO, leading to the closure of a total of 54 cases, was 620 days per case. In that year, GPO's rank among federal agencies was 72nd out of 84 agencies, where the first agency on the list has the lowest average days per case. In FY 1993, the average case processing time for a total of 23 cases closed at GPO was 940 days per case. That placed GPO 72nd among 80 agencies on which EEOC reported. *See* EEOC, "Federal Sector Report on EEO Complaints and Appeals -- By Federal Agencies for Fiscal Year 1994," at pages 34-36; EEOC, "Federal Sector Report on EEO Complaints and Appeals -- By Federal Agencies for Fiscal Year 1993," at pages 34-36.

## Procedures

### Administrative

GPO — unlike GAO — is subject to the requirements prescribed by the EEOC for agency EEO programs, and to the EEOC's authority to hear appeals from GPO's decisions on discrimination complaints.<sup>1</sup> The EEOC's authority with respect to GPO extends to discrimination under Title VII, the ADEA, and the EPA,<sup>2</sup> but not under the ADA.<sup>3</sup>

***The GPO Discrimination Complaint Process.*** GPO's Equal Employment Opportunity Service (EEO Service) administers a process for resolving complaints of discrimination against GPO. For allegations of a violation of title VII, the ADEA, and the EPA, the complaints process is governed by EEOC's regulations for executive branch agencies,<sup>4</sup> and for allegations of ADA violations, GPO's complaints process is similar.<sup>5</sup> Under this process, GPO employees who allege violations of anti-discrimination laws must bring the matter to the attention of an EEO counselor within 45

---

<sup>6</sup> (...continued)

believed to evidence a violation of law or gross mismanagement. 5 U.S.C. 2302(b)(8).

<sup>1</sup> See 29 C.F.R. part 1614. Reflecting the terms of the anti-discrimination laws prior to the enactment of the CAA, EEOC's regulations state that their coverage includes units of the legislative branch "having positions in the competitive service," but do not expressly cover GPO in its entirety. 29 C.F.R. 1614.103(b)(4). However, the EEOC has advised that it intends to update its regulations to cover GPO by name, in conformity with the amendments made by the CAA.

<sup>2</sup> See 42 U.S.C. 2000e-16(b) (Title VII); 29 U.S.C. 633a(b) (ADEA); Section 1 of Reorg. Plan No. 1 of 1978, reproduced in 5 U.S.C. appendix (transferring to the EEOC the authority to enforce and administer the EPA); 29 C.F.R. 1614.103(a), (b)(4).

<sup>3</sup> Section 509(5) of the ADA, 42 U.S.C. 12209(5), which was added by section 201(c)(3)(E) of the CAA, provides that, with respect to GPO employees, the authorities of the EEOC are to be exercised by the head of GPO.

<sup>4</sup> See GPO Instruction 650.1C, "Equal Employment Opportunity and Affirmative Action Programs in the Government Printing Office" (Mar. 29, 1979); GPO Notice 650-29, "Changes to the Discrimination Complaint Process" (Dec. 1, 1992). The 1992 Notice advised employees that EEOC's new regulations, at 29 C.F.R. part 1614, had gone into effect, and that the discrimination complaint process had been changed. The Notice also stated that GPO's Instruction 650.1C was in the process of being revised.

<sup>5</sup> See GPO Notice 650-30, "Procedures for filing Discrimination Complaints Based on Disability" (May 5, 1993).

days of the alleged act. The EEO Service provides counseling to the complainant and offers voluntary mediation at the option of the complainant.<sup>1</sup>

If attempts to resolve the matter informally are not successful, a formal complaint is submitted, which is investigated by GPO's EEO Service.<sup>2</sup> After receiving the investigation report, or after 180 days, the complainant may request a hearing, in which case the EEOC appoints an administrative judge to conduct the hearing and issue findings of fact and conclusions of law and order appropriate relief.<sup>3</sup> After the hearing, or if the complainant declines to request a hearing, GPO has 60 days within which to issue a final agency decision, including findings and appropriate remedies and relief. GPO may reject or modify the findings and conclusions or relief ordered by the administrative judge, but, if the agency does not do so within the 60-day deadline, the administrative judge's order becomes the final agency decision.<sup>4</sup>

***The GPO Negotiated Grievance Procedures.*** Members of bargaining units may also grieve claims of unlawful discrimination under the negotiated grievance procedures established under collective bargaining agreements.<sup>5</sup>

***Appeal to the EEOC.*** GPO employees may have the EEOC review a final GPO decision on a

---

<sup>1</sup> See GPO Instruction 650.12 (June 3, 1994), "Mediation for Equal Employment Opportunity Claims." The mediators are EEO counselors or other GPO employees trained as mediators.

<sup>2</sup> In the case of a class complaint, necessary fact-gathering is ordinarily conducted by the parties through discovery, although the administrative judge may request that the agency conduct an investigation if necessary. See 29 C.F.R. 1614.204(f); Paragraphs 11.f-g of GPO Notice 650-30 (May 5, 1993).

<sup>3</sup> See EEOC's regulations at 29 C.F.R. 1614.108(f). For claims of discrimination on the basis of disability, for which GPO is not governed by EEOC regulations, GPO's regulations do not authorize the employee to request a hearing until the investigation is completed, even if it takes longer than 180 days. Paragraph 10.d(2) of GPO Notice 650-30. If a hearing is requested in a disability case, GPO, by agreement with the EEOC, appoints an EEOC administrative judge to hear the case.

<sup>4</sup> See EEOC's regulations at 29 C.F.R. 1614.109(g). For claims of discrimination on the basis of disability, GPO's regulations do not cause the administrative judge's order to become the agency's final decision, even if the agency takes longer than 60 days to reach a final decision. Paragraph 10.d(2) of GPO Notice 650-30.

<sup>5</sup> See 29 C.F.R. 1614.301.



discrimination complaint (except for complaints alleging disability discrimination).<sup>1</sup> A grievant under a negotiated grievance procedure may have the EEOC review the final decision of the arbitrator or the FLRA.<sup>2</sup>

***“Mixed Case” Complaints and Appeals.*** Even though the GPO is in the legislative branch, certain GPO employees are entitled to appeal certain kinds of agency actions to the MSPB.<sup>3</sup> Such an appeal to the MSPB may include allegations of employment discrimination under any of the anti-discrimination laws applicable at GPO. Civil service statutes and regulations provide a multiplicity of appeal rights available for “mixed case” complaints and appeals in the federal government.<sup>4</sup> These provisions afford the employee various options to elect consideration of the complaint sequentially under the GPO’s EEO complaint procedure, by the MSPB, by the EEOC, and, if these appellate boards disagree, by a Presidentially appointed Special Panel.<sup>5</sup>

***Enforcement of EEO Decisions and Settlements.*** The complainant may appeal to the EEOC for a determination as to whether the agency has complied with a settlement agreement or final agency decision,<sup>6</sup> or for enforcement of an EEOC final decision.<sup>7</sup> The EEOC has also directed its Office of Federal Operations to ascertain whether an employing agency is implementing a decision, and to submit findings and recommendations for enforcement to the EEOC or other appropriate agency, and, where appropriate, the EEOC may refer the matter to the Office of Special Counsel for enforcement action.<sup>8</sup> (The Special Counsel’s enforcement authority is described below.)

---

<sup>1</sup> See 29 C.F.R. 1614.401(a)-(b).

<sup>2</sup> See 29 C.F.R. 1614.401(c).

<sup>3</sup> These include serious adverse actions resulting from a performance appraisal or effected by a RIF and certain other appealable adverse actions. See, e.g., 5 U.S.C. 4301 *et seq.* (performance appraisals); 5 U.S.C. 7511 *et seq.* (appealable adverse actions); see generally 5 C.F.R. 1201.3 (summary of MSPB’s appellate jurisdiction).

<sup>4</sup> 5 U.S.C. 7702; 5 C.F.R. 1201.151-1201.175 (MSPB regulations); 29 C.F.R. 1614.302-1614.310 (EEOC regulations).

<sup>5</sup> Complaints asserting discrimination on the basis of disability, not being appealable to the EEOC, are also not included under the provisions of civil service statute and regulation governing “mixed cases.”

<sup>6</sup> 29 C.F.R. 1614.504.

<sup>7</sup> 29 C.F.R. 1614.503.

<sup>8</sup> *Id.*

**Other Avenues of Enforcement.** Under civil service law applicable to GPO, the Special Counsel is responsible for investigating any allegation of the occurrence of a prohibited personnel practice, and is authorized to conduct an investigation even in the absence of an allegation.<sup>1</sup> Based on the outcome of the investigation, the Special Counsel may request a stay from the MSPB, may submit a report to the agency involved in recommending corrective action, may petition the MSPB for corrective action, or may submit a complaint to the MSPB recommending disciplinary action. An employee may apply directly to the MSPB for corrective action or stay in the case where an agency retaliates because of “whistleblowing” by the employee.<sup>2</sup>

## **Judicial**

**Civil Action.** Unlike GAO employees, whose right to file a civil action is affected by the GAOPA and the *Ramey* decision,<sup>3</sup> GPO employees have the right to file a civil action to the full extent provided under the applicable anti-discrimination laws. A GPO employee may file a civil action after having filed a complaint and after having reached one of four stages in the administrative processing of the complaint: (i) after 180 days from filing the complaint with the employing agency, if there is no final agency decision on the complaint, or (ii) within 90 days of receipt of notice of final action by the employing agency, or (iii) after 180 days from appealing to the EEOC, if there is no final decision by EEOC, or (iv) within 90 days of receipt of notice of final decision by EEOC on appeal.<sup>4</sup> (In the case of an EPA complaint, the employee may file a civil action regardless of whether he or she has pursued any administrative complaint processing.)<sup>5</sup>

As explained in the section on GAO, a jury trial may be requested in civil actions under Title VII or the ADA if the complaining party seeks compensatory damages, but a jury trial is not available in an EPA action, and probably not in an ADEA action, brought against a federal agency. And GPO employees, like GAO employees, may not be able to bring a civil action in case of retaliation for exercising ADEA or ADA rights. However, as retaliation is forbidden under applicable EEO regulations,<sup>6</sup> and under prohibited personnel practices, GPO employees may seek protection against retaliation through available administrative procedures.

---

<sup>1</sup> 5 U.S.C. 1214-1215.

<sup>2</sup> 5 U.S.C. 1221.

<sup>3</sup> *Ramey v. Bowsher*, 9 F.3d 133 (D.C. Cir. 1994).

<sup>4</sup> 42 U.S.C. 2000e-16(c); 29 U.S.C. 633a(c); 42 U.S.C. 12209(5); 29 C.F.R. 1614.408.

<sup>5</sup> 29 U.S.C. 216(b) (right to file a civil action under the FLSA, of which the EPA is a part); 29 C.F.R. 1614.409.

<sup>6</sup> See 29 C.F.R. 1614.101(b) (EEOC regulations); Paragraph 8 of GPO Notice 650-30, “Procedures for Filing Discrimination Complaints Based on Disability” (May 5, 1993).

## Relief

The relief available in an EEO case brought by a GPO employee is the same as for a GAO employee. In appropriate cases, this may include reinstatement or hiring, with or without back pay, or other injunctive relief.<sup>1</sup> In addition, in a case under Title VII or the ADA, compensatory damages may also be available for intentional discrimination,<sup>2</sup> and in a case under the EPA, double damages may be available as liquidated damages, unless the employer shows that its act or omission was in good faith.<sup>3</sup>

---

<sup>1</sup> In case of a violation of Title VII or the ADA, the following relief may be available to a GPO employee: Enjoining unlawful employment practices, ordering that such affirmative steps be taken as may be appropriate, including reinstatement or hiring, with or without back pay, or any other equitable relief as may be deemed appropriate. Interest may be awarded to compensate for delay in payment. *See* 42 U.S.C. 2000e-5(g); 42 U.S.C. 2000e-16(d); 42 U.S.C. 12209(5). In case of a violation of the ADEA, the relief available to a GPO employee is such legal or equitable relief as will effectuate the purposes of the ADEA. 29 U.S.C. 633a(c). In case of a violation of the EPA, a GPO employee may recover any amount withheld from an employee in violation of EPA requirements. 29 U.S.C. 216(b).

<sup>2</sup> 42 U.S.C. 1981a affords compensatory damages for intentional discrimination in violation of Title VII or the ADA. In such a case, compensatory damages for future pecuniary losses, emotional pain and suffering, and other nonpecuniary losses are capped at no more than \$300,000.

<sup>3</sup> *See* 29 U.S.C. 206(d)(3), 216(b), 260.

## **ANTI-DISCRIMINATION LAWS**

### **EVALUATION**

#### **Substantive Rights and Protections.**

At GPO, as at GAO, the basic prohibitions against discrimination under the anti-discrimination laws (title VII, ADEA, ADA and EPA) are generally the same as those afforded other federal sector employees, those in the private sector, and other legislative branch employees covered under the CAA.

#### **Procedures**

The administrative and judicial procedures available to GPO employees with discrimination complaints are generally the same as those available to executive branch employees.

##### **Administrative**

The procedures for GPO employees are similar to those at GAO, but are significantly different from those under the CAA. Executive branch procedures offer multiple stages of fact finding, decision making, and review, which can be lengthier than under the CAA, and the employing agency plays a much greater role in the initial counseling, mediation, investigation and decision phases.

The EEO complaints procedures available to GPO employees include mechanisms for investigating complaints and taking enforcement action. GPO's EEO Service investigates individual complaints, the EEOC monitors compliance with final decisions of the Commission, and the Office of Special Counsel has authority for taking enforcement actions in discrimination cases, including investigation with or without a charge, seeking corrective action or stays, and disciplinary action. Although similar enforcement authorities are available in the private sector at the EEOC, there is no comparable authority under the CAA, which establishes a dispute resolution process that provides confidential counseling and mediation and an independent administrative hearing.

GPO employees with discrimination complaints generally are afforded access to independent administrative tribunals to the same extent as executive branch employees. Final GPO decisions may be appealed to the EEOC, and certain complaints may be reviewed by the MSPB or the FLRA prior to EEOC review. GPO employees also enjoy the protection of the Office of Special Counsel, which investigates and prosecutes allegations of EEO violations government-wide. Unlike executive branch employees, however, GPO employees may not obtain EEOC review of complaints alleging discrimination on the basis of disability. Other legislative branch employees covered by the CAA may obtain review of any discrimination complaint by the independent Office

# **FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)**

## **Substantive Rights**

GPO, like GAO, is covered by the provisions of civil service law enacted by the FMLA<sup>1</sup> and by OPM's FMLA regulations,<sup>2</sup> which are described in the section of this study on GAO. GPO has also promulgated its own internal policy to ensure FMLA compliance, and to provide instructions for processing FMLA requests.<sup>3</sup>

## **Procedures**

The FMLA civil service provisions do not provide any administrative or judicial processes by which employees may seek redress for violations. Therefore, employees who believe their rights have been violated must rely on the various remedial provisions available generally for employment-related disputes in the federal government. Several administrative and judicial avenues are available to GPO employees:

***Appeal to the MSPB.*** As GAO employees may turn to the PAB to seek redress for FMLA violations, a GPO employee may request MSPB review of an appealable GPO action that the employee believes was in violation of the FMLA. For example, if an employee suffers an appealable adverse action or performance-based action, the employee may appeal under civil

---

<sup>1</sup> 5 U.S.C. 6381-6387, added by Pub. L. No. 103-3, title II, 107 Stat. 19 (Feb. 5, 1993). Coverage of the FMLA civil service provisions includes, among others, most employees of agencies headed by Presidential appointees, and the Public Printer is such a Presidential appointee. See 5 U.S.C. 2105(a)(1)(A), (D), 6301(2)(A), 6381(1)(A).

<sup>2</sup> 5 C.F.R. 630.1201-630.1211 (regulations promulgated by OPM). Regulations promulgated by the Secretary of Labor implementing the private sector provisions of the FMLA contain a provision stating that these regulations also apply to GPO. 29 C.F.R. 825.109(d). However, this provision is incorrect, since the private sector FMLA provisions do not apply to any employee covered by the civil service FMLA provisions. See 29 U.S.C. 2611(2)(B)(I). A Department of Labor official has acknowledged orally that the regulations' purported coverage of GPO is incorrect, and has said that this will be confirmed to the Office of Compliance in writing.

<sup>3</sup> GPO Instruction 645.16, "Family/Medical Leave Without Pay (FMLWOP) Under the Family and Medical Leave Act of 1993" (Aug. 5, 1993).

# **FAIR LABOR STANDARDS ACT OF 1938 (FLSA)**

## **Substantive Rights**

### **Statutes**

Most GPO employee have been covered under the Fair Labor Standards Act (FLSA) since the enactment of the Fair Labor Standards Amendments of 1974.<sup>1</sup> The CAA amended the FLSA so as to extend coverage to all nonexempt employees.<sup>2</sup> The substantive provisions of the FLSA and OPM's regulations implementing the FLSA, which also cover GPO, are described in the section of this study on GAO.

Some GPO employees have additional coverage under the civil service laws and OPM regulations. Those GPO employees whose compensation is determined by a conference between the Public Printer and a committee selected by the trades affected, are entitled to overtime in accordance with the overtime provisions of 5 U.S.C. 5544.<sup>3</sup> Employees are entitled to overtime (at a rate of not less than time and one-half) for work in excess of 40 hours a week or 8 hours a day. OPM is been responsible for administering this provision in conjunction with its responsibilities for administering the FLSA. By regulation, OPM is to prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for purposes of section 7 of the FLSA, so as to ensure that no employee receives less than what he or she would receive under 5 U.S.C. 5544.<sup>4</sup>

GPO and its employees are also covered under the pay provisions of the Kiess Act (which applies to GPO only).<sup>5</sup> Among other things, this statute states that the "minimum pay of journeymen printers, pressman, and bookbinders employed in the Government Printing Office shall be at the

---

<sup>1</sup> See 29 U.S.C. 203(e)(2)(A)(iii), added by section 6(a) of Pub. L. No. 93-259, 88 Stat. 58 (April 8, 1974). This provision formerly referred to "any unit of the legislative or judicial branch of the Government which has positions in the competitive service."

<sup>2</sup> The CAA, aside from applying certain rights and protections of the FLSA to the legislative branch, amended this definitional section of the FLSA by striking the reference to "legislative" in clause (iii) and adding as a new clause (vi) "the Government Printing Office." 29 U.S.C. 203(e)(2)(A)(vi), added by section 203(d) of Pub. L. No. 104-1, 109 Stat. 10 (January 23, 1995).

<sup>3</sup> 46 Comp. Gen. 217 (1966); B-191619, 1978 WL 9921 (C.G. May 9, 1978).

<sup>4</sup> See section 2(42)(B) of Pub. L. No. 102-378, 106 Stat. 1352, amending 5 U.S.C. 5544(a).

<sup>5</sup> 44 U.S.C. 305.

# OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

## Substantive Rights

GPO is currently covered by section 19 of the OSHA,<sup>1</sup> as well as the related provisions of 5 U.S.C. 7902, which require GPO to establish and maintain a comprehensive occupational safety and health program. These are the same provisions as apply to GAO, and the requirements of these provisions are described in the GAO portion of this study.

## Regulations

***GPO Instructions.*** Although the OSHA regulations promulgated by the Secretary of Labor are not binding on GPO, the applicable statutes require that GPO's OSHA program be consistent with the standards promulgated by the Secretary, and GPO operates through negotiated agreements and GPO-issued instructions as though the Secretary's regulations did apply. The GPO instructions and agreements address issues ranging from the creation of safety and health programs to the establishment of safety requirements and procedures, and refer to the Secretary's regulations as guidance in developing these instructions.<sup>2</sup>

## Procedures

### Administrative

***GPO's complaint procedures.*** Under procedures established by GPO,<sup>3</sup> employees are instructed to report hazards or unsafe conditions in writing to their supervisor. If corrective action is not

---

<sup>1</sup> 29 U.S.C. 668.

<sup>2</sup> For example, GPO's instruction establishing its "Occupational Safety and Health Policy" cites section 19 of the OSHA, Executive Order 12196, (describing the Occupational Safety and Health Program for Federal Employees), and 29 C.F.R. 1960 as the guidelines that the agency relied on in establishing the policy. See GPO Instruction 670.42, "Occupational Safety and Health Policy" (Aug. 29, 1986). See also, e.g. GPO Instruction 670.50, "Electrical and Mechanical Lockout-Tagout Safety Procedures" (May 1, 1991) ("It is the policy of the GPO that the OSHA safety regulations appearing in 29 C.F.R. 1910.47 be adopted to provide maximum employee protection and that the procedures identified in this Instruction be followed to implement that regulation."); GPO Instruction 670.1B, "Foot Protection Program" (May 5, 1995) (citing as authority 5 U.S.C. 7902 and 29 U.S.C. 668).

<sup>3</sup> See GPO Instruction 670.55, "Procedure to Report Hazards, Unsafe Conditions or Practices" (Oct. 22, 1993).

taken by the supervisor, or the employee believes that the action taken is not appropriate, the employee may submit a follow-up report. Within 30 days, the unit Occupational Safety and Health Committee (OSHC) will forward to the employee a written report on the status of the complaint and corrective action. If the employee believes that the determination of the unit OSHC does not adequately address the problem, or that the recommendations to correct the situation are not appropriate, the employee may refer the problem to the GPO safety office. Upon request of the employee his or her name will not be disclosed.

The negotiated grievance procedure for bargaining unit employees may also be used by bargaining unit employees who believe that occupational safety and health standards are violated.

***GPO's compliance mechanisms.*** GPO's Occupational Health and Environmental Services unit conducts comprehensive safety and industrial hygiene surveys and inspections on a regular basis, maintains a computerized tracking system to follow through on corrective actions required as a result of inspections, conducts formal accident investigations, maintains a plan for hazard abatement and control, and conducts hazard awareness training for employees and supervisors.<sup>1</sup>

Based on the Labor Secretary's safety and health regulations, GPO established the Occupational Safety and Health Committee Program. A Joint Labor-Management Safety Committee was created, allowing direct union/employee participation and discussion of safety-related matters. Under the Program, there are also seventeen local Occupational Safety and Health Committees.<sup>2</sup> The Joint Labor-Management Committee meets monthly to discuss issues that are better addressed globally than at the local level, and recommends corrections. The local Committees perform various safety-related activities, such as monitoring safety and health programs; and assisting accident investigations.

## **Judicial**

Under current law no judicial remedies are available to GPO employees to redress safety and health issues.

## **Future-Effective Changes Under the CAA**

Unlike GAO and the Library, the rights and protections of OSHA are not made applicable to GPO by section 215 of the CAA.

---

<sup>1</sup> See comments (dated May 17, 1996) submitted for the study by GPO Director of Occupational Health and Environmental Services.

<sup>2</sup> See GPO Instruction 670.49, "Occupational Safety and Health Committees" (Feb. 21, 1990).



## EVALUATION

### Procedures

#### **Administrative**

Under present law, GPO has an internal investigation process and both administrative and negotiated grievance procedures to address employee safety and health complaints. By comparison, under the CAA the General Counsel of the Office of Compliance will exercise the authority to investigate and inspect places of employment under the jurisdiction of employing offices, as well as issue citations and prosecute violations that are not corrected by the employing office named in the citation or notification.<sup>1</sup>

***Record Keeping and Report Obligations.*** Section 19 of OSHA requires agency heads, including the Public Printer, to submit annual reports to the Secretary of Labor on occupational accidents and injuries and on the agency programs established under that section.<sup>2</sup> Section 7902(e) of title 5 imposes similar record keeping and reporting requirements on each agency. However, there is no apparent mechanism for enforcement of these sections against federal agencies. These provisions may arguably impose general record keeping requirements with respect to occupational accidents and injuries on GPO, because it is a federal agency within the meaning of those statutory provisions.

GPO currently maintains an accident reporting and investigation program, under which supervisor's reports, investigation reports of motor vehicle accidents, and medical injury reports are maintained.<sup>3</sup> By comparison, the CAA and the proposed regulations thereunder do not require employing offices to comply with general safety and health record keeping requirements.<sup>4</sup>

---

<sup>1</sup> 2 U.S.C. 1341(c).

<sup>2</sup> 29 U.S.C. 668(a)(5).

<sup>3</sup> See GPO Instruction 670.8B, "Accident Reporting System" (Jan. 9, 1987).

<sup>4</sup> See 142 Cong. Rec. S11021, 3d col. (Sept. 19, 1996) (Notice of Proposed Rulemaking Under section 215 of the CAA).

**Judicial**

Under present law no judicial remedies are available to GPO employees. Nor would the CAA provide GPO employees with a judicial remedy, but the General Counsel or an employing office aggrieved by a final decision of the Board following a hearing or variance proceeding may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 407 of the CAA.<sup>1</sup>

---

<sup>1</sup> 2 U.S.C. 1341(c)(5).

rate of 90 cents an hour for the time actually employed.” In addition, the Act states that the Public Printer may grant to an employee who is paid on an annual basis compensatory time off from duty, instead of overtime pay for overtime work.<sup>1</sup>

## **Regulations**

GPO has issued GPO Instruction 640.7B, dated March 19, 1979 (amended December 2, 1994), governing general pay administration. Its intended purpose is “to serve managers as a practical guide concerning pay matters,” including overtime. Several aspects of this Instruction are worthy of note relative to the FLSA:

- C The Instruction seems to suggest that, for purposes of overtime, exempt employees include not only executive and administrative employees but also supervisory employees. While executive and administrative employees are indeed exempt under section 13 of the FLSA, “supervisors” as such are not included within the exemption. In addition, the FLSA overtime exemption afforded “professional” employees is not specifically mentioned in the Instruction. The GPO advises that it does “not believe the discrepancy [with respect to “supervisors”] has any practical impact.”<sup>2</sup> In its view, the employees whom it exempts as “supervisors” would be exempt under the term “executive” as defined in the FLSA implementing regulations issued by OPM. With respect to “professional” employees, GPO advises that despite the lack of the term “professional” in its regulations, it nevertheless treats such employees as exempt, based on OPM grading and classification standards.
- C The Instruction provides that compensatory time off in lieu of overtime will be granted to employees in grades PG-14 and PG-15, who perform irregular or occasional overtime work that is ordered or approved by variously named GPO officials.<sup>3</sup>

On June 5, 1995, the Public Printer issued a Notice informing supervisors at all grades, series, and pay levels that any approved work in excess of their basic tour of duty will not be paid at current overtime rates of 150 percent, but with compensatory time off instead. For each hour of overtime worked, a supervisor will receive one hour of compensatory time.

---

<sup>1</sup> 44 U.S.C. 305(b).

<sup>2</sup> Memorandum from GPO to Office of Compliance (October 9, 1996).

<sup>3</sup> The authority for allowing compensatory time off is apparently derived from the Kiess Act, 44 U.S.C. § 305(b), since the FLSA does not authorize GPO to satisfy its overtime pay obligations with compensatory time off.

## Procedures

GPO employees may seek redress for violation of their FLSA rights through several administrative and judicial avenues:

### Administrative

***OPM's FLSA compliance process and general claims settlement authority.*** As more fully described in the section of this study on GAO, employees of GPO who allege violation of their FLSA rights may apply to OPM under its statutory responsibility to receive and settle federal employees' claims against the government.

GPO employees who are members of bargaining units may also submit FLSA complaints under the negotiated grievance procedure, and non-members may proceed under GPO's administrative grievance procedures.

### Judicial

An action to recover any unpaid compensation owed under the FLSA may be brought in any court of competent jurisdiction.<sup>1</sup> FLSA actions by federal employees may be brought, under the Tucker Act, in the Court of Federal Claims or, if the amount claimed does not exceed \$10,000, in an appropriate federal district court.<sup>2</sup>

### Relief

Under the FLSA, GPO employees are entitled to minimum wage and overtime compensation. Additionally, liquidated damages are available, in an amount equal to the amount of unpaid minimum wages or unpaid compensation, except that a court has discretion to reduce or dispense with the award of liquidated damages if the employer shows that the violation was in good faith, and that the employer had reasonable grounds for believing that the act or omission was not a violation. For a violation of the FLSA prohibition against retaliation, legal or equitable relief may be available, including employment, reinstatement, promotion, and the payment of lost wages and an additional amount of liquidated damages.<sup>3</sup>

The FLSA also provides that the court shall allow reasonable attorney's fees.<sup>4</sup>

---

<sup>1</sup> 29 U.S.C. 216(b).

<sup>2</sup> 28 U.S.C. 1346(b), 1491.

<sup>3</sup> 29 U.S.C. 216(b), 260.

<sup>4</sup> 29 U.S.C. 216(b).

## EVALUATION

GPO is subject to the same FLSA provisions, regulations, and procedures as is the GAO, and the rights and protections under these laws and regulations were evaluated in the section of this study on the GAO. Thus, except as noted below, the evaluation for GAO generally applies to GPO.

GPO, unlike GAO, is not covered by 5 U.S.C. 5543(a), which authorizes federal agencies, at the request of an employee, to grant compensatory time off in lieu of FLSA overtime pay for time spent in “irregular or occasional overtime work.” Instead, GPO is covered by a provision of the Kiess Act that authorizes the Public Printer to grant compensatory time off for employees who are paid on an annual basis.<sup>1</sup> Unlike section 5543(a), which includes an express exception from FLSA requirements, it is unclear to what extent this Kiess Act provision can be reconciled with the FLSA, which does not generally allow employers to satisfy overtime obligations with compensatory time off. Similarly, while the FLSA, as recently amended, provides a current minimum wage of \$4.75 per hour,<sup>2</sup> the rate specified in the Kiess Act remains at 90 cents per hour.<sup>3</sup>

---

<sup>1</sup> 44 U.S.C. 305(b).

<sup>2</sup> Pub. L. No. 104-188 (August 20, 1996).

<sup>3</sup> 44 U.S.C. 305.

service law to the MSPB,<sup>1</sup> and could argue that the adverse action violated the FMLA and should be reversed.<sup>2</sup>

***Administrative and Negotiated Grievance Procedures.*** For matters not appealable to the MSPB, employees can file a complaint under GPO's general administrative grievance procedure, referred to above. Furthermore, a member of a bargaining unit at GPO can seek resolution of a claim under the negotiated grievance procedure.

***OPM's General Claims Settlement Process.*** A GPO employee can also seek redress by applying to OPM under its statutory responsibility to receive and settle federal employees' claims against the Government.<sup>3</sup>

## **Judicial**

A GPO employee who appeals to the MSPB may obtain review of the MSPB decision by the U.S. Court of Appeals for the Federal Circuit.<sup>4</sup> In appropriate cases, a GPO employee, like a GAO employee, may also bring suit in the Court of Federal Claims for money owed by the government as a result of an FMLA violation, and could seek restoration to position and correction of records, if warranted, as an incident to a monetary judgment. If the claim does not exceed \$10,000, the employee can sue in federal district court.<sup>5</sup>

## **Relief**

Since the FMLA civil service provisions do not specify what relief would be available in case of a violation, an aggrieved employee must rely on other laws or on general legal principles to obtain relief. For example, if an employee is demoted, or fired, or denied restoration, the employee can

---

<sup>1</sup> The MSPB's appellate jurisdiction is summarized at 5 C.F.R. 1201.3.

<sup>2</sup> The MSPB has ruled that it has jurisdiction over the FMLA as a defense to an otherwise appealable action, and: "If an adverse action is predicated on the agency's erroneous interference with an employee's rights under the FMLA, such adverse action is in violation of law, and it may not be sustained." *Ramey v. U.S.P.S.*, 70 M.S.P.R. 463, 467 (citing 5 U.S.C. 7701(c)(2)(C)).

<sup>3</sup> The authority to settle claims against the government has historically been assigned to GAO under 31 U.S.C. 3702. However, the Legislative Branch Appropriations Act, 1996 transferred this claims settlement authority to OMB as of June 30, 1996, subject to delegation. Sec. 211, Pub. L. No. 104-53, 109 Stat. 535-536 (1995), set out at 31 U.S.C. 501 note. OMB has delegated the authority to settle employee claims to OPM.

<sup>4</sup> See 5 U.S.C. 7703.

<sup>5</sup> 28 U.S.C. 1346(a)(2), 1491(a).

claim compensation due under the Back Pay Act.<sup>1</sup> The employee may also seek to recover the amount of benefits guaranteed by the FMLA that are unlawfully denied, and are therefore due and owing from the Government.

## **Future-Effective Changes Under the CAA**

The CAA does not affect the application of FMLA at GPO, unlike GAO and the Library, which the CAA removes from the civil service version of the FMLA, and places under the private sector FMLA.<sup>2</sup>

## **EVALUATION**

### **Substantive Rights**

GPO is subject to the same FMLA civil service laws and regulations as GAO, and the rights and protections were evaluated in the GAO section of this study. The evaluation for GAO applies in nearly all respects for GPO as well.

The civil service FMLA provisions afford greater substantive rights to employees than the private sector provisions, which are applicable under the CAA, but the civil service version of the FMLA does not provide administrative or judicial procedures.

### **Procedures**

#### **Administrative**

Civil service law authorizes a GPO employee to appeal certain kinds of personnel actions to the MSPB, where the employee could argue that the agency's action violated FMLA rights. Furthermore, GPO's administrative grievance procedure is generally available for claims that cannot be presented to the MSPB, but this procedure does not offer a process independent of GPO management. The negotiated grievance procedure is also available, provided the employee is a member of a bargaining unit.

By comparison, the CAA provides administrative procedures, including the right to an adjudicatory hearing and appeal to the independent Board of the Office of Compliance, for a covered employee who alleges any FMLA violation.

---

<sup>1</sup> 5 U.S.C 5596.

<sup>2</sup> 2 U.S.C. 1312(c), (e)(1).

**Judicial**

As discussed in the context of GAO, the civil service remedies and relief available under civil service law in a case of an FMLA violation are less protective of employee rights than those under the CAA and under private sector law.



of Compliance Board, but the General Counsel of the Office of Compliance has no investigatory or prosecutorial authority in EEO cases.

## **Judicial**

Employees at GPO have the same right as executive branch employees to file a civil action under anti-discrimination laws at various points after filing an administrative complaint or, in the case of an ADEA or EPA claim, as an alternative to filing an administrative complaint. Even after exhausting administrative remedies, these employees retain the right to file a civil action in federal district court and have a trial *de novo*. A jury trial is available in cases under Title VII and the ADA, but probably not under the ADEA and EPA.

For private sector employees and covered legislative branch employees under the CAA, the right to file a civil action and request a jury trial is generally available in discrimination cases. However, under the CAA, a covered employee who elects to pursue an administrative rather than judicial complaint may obtain only appellate judicial review in the Court of Appeals for the Federal Circuit, after exhausting administrative remedies.

GPO employees also enjoy broad protections against retaliation for asserting rights under anti-discrimination laws, similar to the protections available to employees of GAO and the executive branch. GPO employees may seek administrative remedies under the discrimination complaints procedure or negotiated grievance procedure at GPO, or under civil service law. They can also gain access to federal district court in claims of retaliation under Title VII and EPA, but the law is uncertain with respect to ADEA and ADA violations. By comparison, covered legislative branch employees are protected by section 207 of the CAA, which prohibits retaliation for the exercise of rights with respect to any CAA law, including any of the anti-discrimination laws, and private sector employees are protected under specified statutory anti-retaliation provisions in these laws.

## **Relief**

Most types of relief available for discrimination violations are the same for GPO employees as for other legislative branch employees covered under the CAA, as well as executive branch and private sector employees. However, two kinds of damages are available to private sector employees and employees covered under the CAA that are not available to GPO or executive branch employees: (a) compensatory damages for discrimination involving race, ancestry, and ethnicity, under 42 U.S.C. 1981; and (b) liquidated damages in the case of a willful violation of the ADEA, in an amount equal to the amount owing as a result of the violation.

In addition, certain punitive damages and penalties are available against private sector employers in title VII and ADA cases that are not available against federal government employers, including employing offices under the CAA, in the executive branch, and GPO.

## **Timeliness in Resolving Discrimination Complaints**

Commenters expressed concern about the slowness with which they believe GPO processes discrimination cases.

The EEOC has reported that the average case processing time by GPO was 620 days for cases closed in FY94, and 940 days for cases closed in FY93.<sup>1</sup> Of the more than 80 federal agencies included in the EEOC survey, GPO was in the 15%, with the longest average case processing times.

---

<sup>1</sup> The Equal Employment Opportunity Commission issues annual reports on case handling in the federal sector agencies over which it exercises jurisdiction. In Fiscal Year (FY) 1994, the EEOC reported that the average processing time at GPO, leading to the closure of a total of 54 cases, was 620 days per case. In that year, GPO's rank among federal agencies was 72nd out of 84 agencies, where the first agency on the list has the lowest average days per case. In FY 1993, the average case processing time for a total of 23 cases closed at GPO was 940 days per case. That placed GPO 72nd among 80 agencies on which EEOC reported. *See* EEOC, "Federal Sector Report on EEO Complaints and Appeals -- By Federal Agencies for Fiscal Year 1994," at pages 34-36; EEOC, "Federal Sector Report on EEO Complaints and Appeals -- By Federal Agencies for Fiscal Year 1993," at pages 34-36.

# **FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)**

## **Substantive Rights**

GPO, like GAO, is covered by the provisions of civil service law enacted by the FMLA<sup>1</sup> and by OPM's FMLA regulations,<sup>2</sup> which are described in the section of this study on GAO. GPO has also promulgated its own internal policy to ensure FMLA compliance, and to provide instructions for processing FMLA requests.<sup>3</sup>

## **Procedures**

The FMLA civil service provisions do not provide any administrative or judicial processes by which employees may seek redress for violations. Therefore, employees who believe their rights have been violated must rely on the various remedial provisions available generally for employment-related disputes in the federal government. Several administrative and judicial avenues are available to GPO employees:

***Appeal to the MSPB.*** As GAO employees may turn to the PAB to seek redress for FMLA violations, a GPO employee may request MSPB review of an appealable GPO action that the employee believes was in violation of the FMLA. For example, if an employee suffers an appealable adverse action or performance-based action, the employee may appeal under civil

---

<sup>1</sup> 5 U.S.C. 6381-6387, added by Pub. L. No. 103-3, title II, 107 Stat. 19 (Feb. 5, 1993). Coverage of the FMLA civil service provisions includes, among others, most employees of agencies headed by Presidential appointees, and the Public Printer is such a Presidential appointee. See 5 U.S.C. 2105(a)(1)(A), (D), 6301(2)(A), 6381(1)(A).

<sup>2</sup> 5 C.F.R. 630.1201-630.1211 (regulations promulgated by OPM). Regulations promulgated by the Secretary of Labor implementing the private sector provisions of the FMLA contain a provision stating that these regulations also apply to GPO. 29 C.F.R. 825.109(d). However, this provision is incorrect, since the private sector FMLA provisions do not apply to any employee covered by the civil service FMLA provisions. See 29 U.S.C. 2611(2)(B)(I). A Department of Labor official has acknowledged orally that the regulations' purported coverage of GPO is incorrect, and has said that this will be confirmed to the Office of Compliance in writing.

<sup>3</sup> GPO Instruction 645.16, "Family/Medical Leave Without Pay (FMLWOP) Under the Family and Medical Leave Act of 1993" (Aug. 5, 1993).

service law to the MSPB,<sup>1</sup> and could argue that the adverse action violated the FMLA and should be reversed.<sup>2</sup>

***Administrative and Negotiated Grievance Procedures.*** For matters not appealable to the MSPB, employees can file a complaint under GPO's general administrative grievance procedure, referred to above. Furthermore, a member of a bargaining unit at GPO can seek resolution of a claim under the negotiated grievance procedure.

***OPM's General Claims Settlement Process.*** A GPO employee can also seek redress by applying to OPM under its statutory responsibility to receive and settle federal employees' claims against the Government.<sup>3</sup>

## **Judicial**

A GPO employee who appeals to the MSPB may obtain review of the MSPB decision by the U.S. Court of Appeals for the Federal Circuit.<sup>4</sup> In appropriate cases, a GPO employee, like a GAO employee, may also bring suit in the Court of Federal Claims for money owed by the government as a result of an FMLA violation, and could seek restoration to position and correction of records, if warranted, as an incident to a monetary judgment. If the claim does not exceed \$10,000, the employee can sue in federal district court.<sup>5</sup>

## **Relief**

Since the FMLA civil service provisions do not specify what relief would be available in case of a violation, an aggrieved employee must rely on other laws or on general legal principles to obtain relief. For example, if an employee is demoted, or fired, or denied restoration, the employee can

---

<sup>1</sup> The MSPB's appellate jurisdiction is summarized at 5 C.F.R. 1201.3.

<sup>2</sup> The MSPB has ruled that it has jurisdiction over the FMLA as a defense to an otherwise appealable action, and: "If an adverse action is predicated on the agency's erroneous interference with an employee's rights under the FMLA, such adverse action is in violation of law, and it may not be sustained." *Ramey v. U.S.P.S.*, 70 M.S.P.R. 463, 467 (citing 5 U.S.C. 7701(c)(2)(C)).

<sup>3</sup> The authority to settle claims against the government has historically been assigned to GAO under 31 U.S.C. 3702. However, the Legislative Branch Appropriations Act, 1996 transferred this claims settlement authority to OMB as of June 30, 1996, subject to delegation. Sec. 211, Pub. L. No. 104-53, 109 Stat. 535-536 (1995), set out at 31 U.S.C. 501 note. OMB has delegated the authority to settle employee claims to OPM.

<sup>4</sup> See 5 U.S.C. 7703.

<sup>5</sup> 28 U.S.C. 1346(a)(2), 1491(a).

claim compensation due under the Back Pay Act.<sup>1</sup> The employee may also seek to recover the amount of benefits guaranteed by the FMLA that are unlawfully denied, and are therefore due and owing from the Government.

## **Future-Effective Changes Under the CAA**

The CAA does not affect the application of FMLA at GPO, unlike GAO and the Library, which the CAA removes from the civil service version of the FMLA, and places under the private sector FMLA.<sup>2</sup>

## **EVALUATION**

### **Substantive Rights**

GPO is subject to the same FMLA civil service laws and regulations as GAO, and the rights and protections were evaluated in the GAO section of this study. The evaluation for GAO applies in nearly all respects for GPO as well.

The civil service FMLA provisions afford greater substantive rights to employees than the private sector provisions, which are applicable under the CAA, but the civil service version of the FMLA does not provide administrative or judicial procedures.

### **Procedures**

#### **Administrative**

Civil service law authorizes a GPO employee to appeal certain kinds of personnel actions to the MSPB, where the employee could argue that the agency's action violated FMLA rights. Furthermore, GPO's administrative grievance procedure is generally available for claims that cannot be presented to the MSPB, but this procedure does not offer a process independent of GPO management. The negotiated grievance procedure is also available, provided the employee is a member of a bargaining unit.

By comparison, the CAA provides administrative procedures, including the right to an adjudicatory hearing and appeal to the independent Board of the Office of Compliance, for a covered employee who alleges any FMLA violation.

---

<sup>1</sup> 5 U.S.C 5596.

<sup>2</sup> 2 U.S.C. 1312(c), (e)(1).

**Judicial**

As discussed in the context of GAO, the civil service remedies and relief available under civil service law in a case of an FMLA violation are less protective of employee rights than those under the CAA and under private sector law.

# **FAIR LABOR STANDARDS ACT OF 1938 (FLSA)**

## **Substantive Rights**

### **Statutes**

Most GPO employee have been covered under the Fair Labor Standards Act (FLSA) since the enactment of the Fair Labor Standards Amendments of 1974.<sup>1</sup> The CAA amended the FLSA so as to extend coverage to all nonexempt employees.<sup>2</sup> The substantive provisions of the FLSA and OPM's regulations implementing the FLSA, which also cover GPO, are described in the section of this study on GAO.

Some GPO employees have additional coverage under the civil service laws and OPM regulations. Those GPO employees whose compensation is determined by a conference between the Public Printer and a committee selected by the trades affected, are entitled to overtime in accordance with the overtime provisions of 5 U.S.C. 5544.<sup>3</sup> Employees are entitled to overtime (at a rate of not less than time and one-half) for work in excess of 40 hours a week or 8 hours a day. OPM is been responsible for administering this provision in conjunction with its responsibilities for administering the FLSA. By regulation, OPM is to prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for purposes of section 7 of the FLSA, so as to ensure that no employee receives less than what he or she would receive under 5 U.S.C. 5544.<sup>4</sup>

GPO and its employees are also covered under the pay provisions of the Kiess Act (which applies to GPO only).<sup>5</sup> Among other things, this statute states that the "minimum pay of journeymen printers, pressman, and bookbinders employed in the Government Printing Office shall be at the

---

<sup>1</sup> See 29 U.S.C. 203(e)(2)(A)(iii), added by section 6(a) of Pub. L. No. 93-259, 88 Stat. 58 (April 8, 1974). This provision formerly referred to "any unit of the legislative or judicial branch of the Government which has positions in the competitive service."

<sup>2</sup> The CAA, aside from applying certain rights and protections of the FLSA to the legislative branch, amended this definitional section of the FLSA by striking the reference to "legislative" in clause (iii) and adding as a new clause (vi) "the Government Printing Office." 29 U.S.C. 203(e)(2)(A)(vi), added by section 203(d) of Pub. L. No. 104-1, 109 Stat. 10 (January 23, 1995).

<sup>3</sup> 46 Comp. Gen. 217 (1966); B-191619, 1978 WL 9921 (C.G. May 9, 1978).

<sup>4</sup> See section 2(42)(B) of Pub. L. No. 102-378, 106 Stat. 1352, amending 5 U.S.C. 5544(a).

<sup>5</sup> 44 U.S.C. 305.

rate of 90 cents an hour for the time actually employed.” In addition, the Act states that the Public Printer may grant to an employee who is paid on an annual basis compensatory time off from duty, instead of overtime pay for overtime work.<sup>1</sup>

## **Regulations**

GPO has issued GPO Instruction 640.7B, dated March 19, 1979 (amended December 2, 1994), governing general pay administration. Its intended purpose is “to serve managers as a practical guide concerning pay matters,” including overtime. Several aspects of this Instruction are worthy of note relative to the FLSA:

- C The Instruction seems to suggest that, for purposes of overtime, exempt employees include not only executive and administrative employees but also supervisory employees. While executive and administrative employees are indeed exempt under section 13 of the FLSA, “supervisors” as such are not included within the exemption. In addition, the FLSA overtime exemption afforded “professional” employees is not specifically mentioned in the Instruction. The GPO advises that it does “not believe the discrepancy [with respect to “supervisors”] has any practical impact.”<sup>2</sup> In its view, the employees whom it exempts as “supervisors” would be exempt under the term “executive” as defined in the FLSA implementing regulations issued by OPM. With respect to “professional” employees, GPO advises that despite the lack of the term “professional” in its regulations, it nevertheless treats such employees as exempt, based on OPM grading and classification standards.
- C The Instruction provides that compensatory time off in lieu of overtime will be granted to employees in grades PG-14 and PG-15, who perform irregular or occasional overtime work that is ordered or approved by variously named GPO officials.<sup>3</sup>

On June 5, 1995, the Public Printer issued a Notice informing supervisors at all grades, series, and pay levels that any approved work in excess of their basic tour of duty will not be paid at current overtime rates of 150 percent, but with compensatory time off instead. For each hour of overtime worked, a supervisor will receive one hour of compensatory time.

---

<sup>1</sup> 44 U.S.C. 305(b).

<sup>2</sup> Memorandum from GPO to Office of Compliance (October 9, 1996).

<sup>3</sup> The authority for allowing compensatory time off is apparently derived from the Kiess Act, 44 U.S.C. § 305(b), since the FLSA does not authorize GPO to satisfy its overtime pay obligations with compensatory time off.



## Procedures

GPO employees may seek redress for violation of their FLSA rights through several administrative and judicial avenues:

### Administrative

***OPM's FLSA compliance process and general claims settlement authority.*** As more fully described in the section of this study on GAO, employees of GPO who allege violation of their FLSA rights may apply to OPM under its statutory responsibility to receive and settle federal employees' claims against the government.

GPO employees who are members of bargaining units may also submit FLSA complaints under the negotiated grievance procedure, and non-members may proceed under GPO's administrative grievance procedures.

### Judicial

An action to recover any unpaid compensation owed under the FLSA may be brought in any court of competent jurisdiction.<sup>1</sup> FLSA actions by federal employees may be brought, under the Tucker Act, in the Court of Federal Claims or, if the amount claimed does not exceed \$10,000, in an appropriate federal district court.<sup>2</sup>

### Relief

Under the FLSA, GPO employees are entitled to minimum wage and overtime compensation. Additionally, liquidated damages are available, in an amount equal to the amount of unpaid minimum wages or unpaid compensation, except that a court has discretion to reduce or dispense with the award of liquidated damages if the employer shows that the violation was in good faith, and that the employer had reasonable grounds for believing that the act or omission was not a violation. For a violation of the FLSA prohibition against retaliation, legal or equitable relief may be available, including employment, reinstatement, promotion, and the payment of lost wages and an additional amount of liquidated damages.<sup>3</sup>

The FLSA also provides that the court shall allow reasonable attorney's fees.<sup>4</sup>

---

<sup>1</sup> 29 U.S.C. 216(b).

<sup>2</sup> 28 U.S.C. 1346(b), 1491.

<sup>3</sup> 29 U.S.C. 216(b), 260.

<sup>4</sup> 29 U.S.C. 216(b).

## EVALUATION

GPO is subject to the same FLSA provisions, regulations, and procedures as is the GAO, and the rights and protections under these laws and regulations were evaluated in the section of this study on the GAO. Thus, except as noted below, the evaluation for GAO generally applies to GPO.

GPO, unlike GAO, is not covered by 5 U.S.C. 5543(a), which authorizes federal agencies, at the request of an employee, to grant compensatory time off in lieu of FLSA overtime pay for time spent in “irregular or occasional overtime work.” Instead, GPO is covered by a provision of the Kiess Act that authorizes the Public Printer to grant compensatory time off for employees who are paid on an annual basis.<sup>1</sup> Unlike section 5543(a), which includes an express exception from FLSA requirements, it is unclear to what extent this Kiess Act provision can be reconciled with the FLSA, which does not generally allow employers to satisfy overtime obligations with compensatory time off. Similarly, while the FLSA, as recently amended, provides a current minimum wage of \$4.75 per hour,<sup>2</sup> the rate specified in the Kiess Act remains at 90 cents per hour.<sup>3</sup>

---

<sup>1</sup> 44 U.S.C. 305(b).

<sup>2</sup> Pub. L. No. 104-188 (August 20, 1996).

<sup>3</sup> 44 U.S.C. 305.

# OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

## Substantive Rights

GPO is currently covered by section 19 of the OSHA,<sup>1</sup> as well as the related provisions of 5 U.S.C. 7902, which require GPO to establish and maintain a comprehensive occupational safety and health program. These are the same provisions as apply to GAO, and the requirements of these provisions are described in the GAO portion of this study.

## Regulations

***GPO Instructions.*** Although the OSHA regulations promulgated by the Secretary of Labor are not binding on GPO, the applicable statutes require that GPO's OSHA program be consistent with the standards promulgated by the Secretary, and GPO operates through negotiated agreements and GPO-issued instructions as though the Secretary's regulations did apply. The GPO instructions and agreements address issues ranging from the creation of safety and health programs to the establishment of safety requirements and procedures, and refer to the Secretary's regulations as guidance in developing these instructions.<sup>2</sup>

## Procedures

### Administrative

***GPO's complaint procedures.*** Under procedures established by GPO,<sup>3</sup> employees are instructed to report hazards or unsafe conditions in writing to their supervisor. If corrective action is not

---

<sup>1</sup> 29 U.S.C. 668.

<sup>2</sup> For example, GPO's instruction establishing its "Occupational Safety and Health Policy" cites section 19 of the OSHA, Executive Order 12196, (describing the Occupational Safety and Health Program for Federal Employees), and 29 C.F.R. 1960 as the guidelines that the agency relied on in establishing the policy. See GPO Instruction 670.42, "Occupational Safety and Health Policy" (Aug. 29, 1986). See also, e.g. GPO Instruction 670.50, "Electrical and Mechanical Lockout-Tagout Safety Procedures" (May 1, 1991) ("It is the policy of the GPO that the OSHA safety regulations appearing in 29 C.F.R. 1910.47 be adopted to provide maximum employee protection and that the procedures identified in this Instruction be followed to implement that regulation."); GPO Instruction 670.1B, "Foot Protection Program" (May 5, 1995) (citing as authority 5 U.S.C. 7902 and 29 U.S.C. 668).

<sup>3</sup> See GPO Instruction 670.55, "Procedure to Report Hazards, Unsafe Conditions or Practices" (Oct. 22, 1993).

taken by the supervisor, or the employee believes that the action taken is not appropriate, the employee may submit a follow-up report. Within 30 days, the unit Occupational Safety and Health Committee (OSHC) will forward to the employee a written report on the status of the complaint and corrective action. If the employee believes that the determination of the unit OSHC does not adequately address the problem, or that the recommendations to correct the situation are not appropriate, the employee may refer the problem to the GPO safety office. Upon request of the employee his or her name will not be disclosed.

The negotiated grievance procedure for bargaining unit employees may also be used by bargaining unit employees who believe that occupational safety and health standards are violated.

***GPO's compliance mechanisms.*** GPO's Occupational Health and Environmental Services unit conducts comprehensive safety and industrial hygiene surveys and inspections on a regular basis, maintains a computerized tracking system to follow through on corrective actions required as a result of inspections, conducts formal accident investigations, maintains a plan for hazard abatement and control, and conducts hazard awareness training for employees and supervisors.<sup>1</sup>

Based on the Labor Secretary's safety and health regulations, GPO established the Occupational Safety and Health Committee Program. A Joint Labor-Management Safety Committee was created, allowing direct union/employee participation and discussion of safety-related matters. Under the Program, there are also seventeen local Occupational Safety and Health Committees.<sup>2</sup> The Joint Labor-Management Committee meets monthly to discuss issues that are better addressed globally than at the local level, and recommends corrections. The local Committees perform various safety-related activities, such as monitoring safety and health programs; and assisting accident investigations.

## **Judicial**

Under current law no judicial remedies are available to GPO employees to redress safety and health issues.

## **Future-Effective Changes Under the CAA**

Unlike GAO and the Library, the rights and protections of OSHA are not made applicable to GPO by section 215 of the CAA.

---

<sup>1</sup> See comments (dated May 17, 1996) submitted for the study by GPO Director of Occupational Health and Environmental Services.

<sup>2</sup> See GPO Instruction 670.49, "Occupational Safety and Health Committees" (Feb. 21, 1990).

## EVALUATION

### Procedures

#### **Administrative**

Under present law, GPO has an internal investigation process and both administrative and negotiated grievance procedures to address employee safety and health complaints. By comparison, under the CAA the General Counsel of the Office of Compliance will exercise the authority to investigate and inspect places of employment under the jurisdiction of employing offices, as well as issue citations and prosecute violations that are not corrected by the employing office named in the citation or notification.<sup>1</sup>

***Record Keeping and Report Obligations.*** Section 19 of OSHA requires agency heads, including the Public Printer, to submit annual reports to the Secretary of Labor on occupational accidents and injuries and on the agency programs established under that section.<sup>2</sup> Section 7902(e) of title 5 imposes similar record keeping and reporting requirements on each agency. However, there is no apparent mechanism for enforcement of these sections against federal agencies. These provisions may arguably impose general record keeping requirements with respect to occupational accidents and injuries on GPO, because it is a federal agency within the meaning of those statutory provisions.

GPO currently maintains an accident reporting and investigation program, under which supervisor's reports, investigation reports of motor vehicle accidents, and medical injury reports are maintained.<sup>3</sup> By comparison, the CAA and the proposed regulations thereunder do not require employing offices to comply with general safety and health record keeping requirements.<sup>4</sup>

---

<sup>1</sup> 2 U.S.C. 1341(c).

<sup>2</sup> 29 U.S.C. 668(a)(5).

<sup>3</sup> See GPO Instruction 670.8B, "Accident Reporting System" (Jan. 9, 1987).

<sup>4</sup> See 142 Cong. Rec. S11021, 3d col. (Sept. 19, 1996) (Notice of Proposed Rulemaking Under section 215 of the CAA).

**Judicial**

Under present law no judicial remedies are available to GPO employees. Nor would the CAA provide GPO employees with a judicial remedy, but the General Counsel or an employing office aggrieved by a final decision of the Board following a hearing or variance proceeding may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 407 of the CAA.<sup>1</sup>

---

<sup>1</sup> 2 U.S.C. 1341(c)(5).

## **LABOR-MANAGEMENT RELATIONS**

### **(Chapter 71, Title 5, U.S.C.)**

#### **Substantive Rights**

Because GPO is expressly included within the definition of employing “agency,” GPO employees are directly covered under the federal service labor-management relations statute in chapter 71 of title 5, U.S.C.<sup>1</sup> Thus, they have the right to choose whether to be represented by a labor organization for purposes of bargaining over terms and conditions of employment, they are protected against unfair labor practices that may be committed by either an employing office or a labor organization, and their representatives may avail themselves of the provisions governing the resolution of grievances and of disputes over the negotiability of bargaining proposals. Further, the regulations promulgated by the Federal Labor Relations Authority (FLRA) apply to the GPO.

#### **Procedures**

##### **Administrative**

The Federal Labor Relations Authority, an independent agency in the executive branch, is responsible for administering chapter 71. The FLRA conducts elections and other proceedings to decide issues of representation, and it rules on whether unfair labor practices have been committed, and orders appropriate relief. The Authority’s General Counsel is responsible for investigating and prosecuting such unfair labor practice cases before the FLRA. Through the Federal Services Impasses Panel, the FLRA resolves disputes over the negotiability of bargaining proposals.

##### **Judicial**

Decisions of the FLRA are judicially reviewable by the U.S. Courts of Appeals.

## **EVALUATION**

#### **Substantive Rights**

Insofar as the CAA applies the rights, protections and responsibilities of chapter 71 to employing offices of the legislative branch, subjecting the GPO to the CAA in lieu of chapter 71 would not result in significant changes in the substantive rules governing labor-management relations.

---

<sup>1</sup> 5 U.S.C. 7103(a)(3).

# **WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)**

## **Substantive Rights**

The Worker Adjustment and Retraining Notification Act (WARN) does not apply to GPO or its employees, nor does this legislation apply to any federal employers, except as made applicable by the CAA and similar law.<sup>1</sup> The WARN Act assures employees in the private sector of notice in advance of office or plant closings or mass layoffs.

GPO noted in its comments that, while not covered under WARN, GPO employees are afforded notice rights established under civil service and labor-management law. GPO, like GAO, applies RIF regulations that guarantee advance notice, ordinarily at least 60 days, to affected employees. However, in contrast to GAO, where applicable RIF regulations are issued by the employing agency, GPO is subject to the RIF regulations promulgated by OPM that apply throughout the executive branch.<sup>2</sup>

## **Procedures**

An employee covered by OPM's RIF regulations who has been furloughed for more than 30 days, separated, or demoted by a RIF may appeal to the MSPB.<sup>3</sup> Judicial review of MSPB decisions may be obtained by appeal to the U.S. Court of Appeals for the Federal Circuit.<sup>4</sup> However, civil service law does not provide the right to file a civil action in case of violation of the notice requirements or other provisions of OPM's RIF regulations.

Furthermore, bargaining unit members at GPO may submit a claim under negotiated grievance procedures alleging a violation of notice requirements, and non-members of bargaining units may

---

<sup>1</sup> See Presidential and Executive Office Accountability Act, Pub. L. No. 104-331.

<sup>2</sup> 5 C.F.R. part 351. Provisions on RIFs, including the right to receive advance notice, applies under civil service statute to employees of an Executive agency. 5 U.S.C. 3501(b), 3502(d). However, OPM's regulations governing RIFs, which include the guarantee of advance notice, apply as well to legislative and judicial branch employers that are subject to competitive service requirements or that "are determined by the appropriate legislative or judicial administrative body to be covered hereunder." 5 C.F.R. 351.202 (a)(2). Most positions at GPO are in the competitive service and GPO considers itself bound by these OPM regulations.

<sup>3</sup> 5 C.F.R. 351.901, 1201.3(a)(10).

<sup>4</sup> 5 U.S.C. 7703.



submit such a claim under GPO's administrative grievance procedures.

## **Future-Effective Changes Under the CAA**

Section 205 of the CAA, which applies the rights and protections of WARN to GAO and the Library employees as of one year after this study is transmitted to Congress, does not apply to GPO.<sup>1</sup>

## **EVALUATION**

In most respects, the rights to advance notice established in OPM's RIF regulations afforded to GPO employees are as extensive as, or more extensive than, the rights afforded under WARN provisions made applicable by the CAA:<sup>2</sup>

- C The CAA guarantees notice only in the case of an "office closing" or "mass layoff." As defined in applicable statutes and regulations, these terms involve an employment loss during a 30-day period to a significant number of employees at an employment site.<sup>3</sup> Under OPM's RIF regulations, there is no minimum number of employees who must be affected to trigger notice requirements. If a single employee is separated, demoted, reassigned, or furloughed for more than 30 days, and if the cause is a lack of work, a shortage of funds, reorganization, or certain similar reasons, the action is a RIF and notice must be given.<sup>4</sup>
- C Both the CAA and the OPM RIF regulations ordinarily require 60 days advance notice. Both also provide for a shortened notice period in the case of unforeseeable circumstances, but OPM's regulations, unlike the CAA, establish a minimum notice period of 30 days under any circumstances, and allow the notice period to be reduced below 60 days only with the approval of the Director of OPM.<sup>5</sup>

---

<sup>1</sup> 2 U.S.C. 1315(a)(2), (d)(2).

<sup>2</sup> The notice requirements under OPM's regulations are similar, but not identical, to those under GAO's RIF Order, which are discussed in the evaluation of the WARN Act in the section of this study on GAO.

<sup>3</sup> 2 U.S.C 1315 (a)(1); sections 639.3(b) and (c) of Office of Compliance regulations.

<sup>4</sup> 5 C.F.R. 351.201(a)(2), 351.801(a)(1).

<sup>5</sup> 5 C.F.R. 351.801(b).

In at least one respect, however, the substantive notice requirements in the CAA provide greater employee protection. In the case of an office closing or mass layoff, when not all employees are to be laid off on the same date, the CAA requires that notice regarding all affected employees be given 60 days before the date on which the first individual is laid off.<sup>1</sup> OPM's RIF regulations contain no such requirement.

## **Procedures**

### **Administrative**

Civil service law does not provide the right to file a civil action in case of violation of the rights under OPM's RIF regulations. Therefore, only administrative processes are available in a case where a GPO employee is affected by a RIF, including where notice requirements were not met.

### **Judicial**

In contrast, an employee covered by the WARN Act provisions of the CAA who alleges a violation may elect to file a civil action. As a jury trial should be available to private sector employees,<sup>2</sup> and any party under the CAA "may demand a jury trial where a jury trial would be available in an action against a private defendant,"<sup>3</sup> a covered employee may request a jury trial under the CAA as well.

---

<sup>1</sup> See Office of Compliance Board regulations implementing the WARN Act, section 639.5(a)(1).

<sup>2</sup> See *Bentley v. Arlee Home Fashions, Inc.*, 861 F.Supp. 65 (E.D. Ark. 1994).

<sup>3</sup> Section 408(c) of the CAA, 2 U.S.C. 1408(c).

# **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)**

## **Substantive Rights**

GPO is covered by the substantive provisions of USERRA, which apply throughout the federal government, and which are described in the section of this study on GAO.<sup>1</sup> Like other employers that are part of the legislative branch, GPO is authorized under USERRA to determine that it is “impossible or unreasonable” to reemploy a person otherwise entitled to reemployment, in which case OPM shall ensure that the person is offered alternative employment of like seniority, status, and pay at a federal executive agency.<sup>2</sup>

Like the Library but unlike GAO, GPO is excluded from coverage by OPM’s authority to establish regulations implementing the provisions of USERRA, which applies only to federal executive agencies.<sup>3</sup>

## **Procedures**

### **Administrative**

As was described in the section on GAO, OPM is responsible for offering placement in the executive branch when a legislative branch employer determines it impossible or unreasonable to reemploy an employee after service in a uniformed service, and any employee may invoke the investigation and informal compliance efforts by the Labor Department.<sup>4</sup> However, unlike employees of GAO, GPO employees may not use the other federal sector administrative procedures under USERRA -- representation by the OSC, and adjudication of a complaint before the MSPB -- which apply only to “federal executive agencies.”<sup>5</sup>

A GPO employee who suffers a personnel action appealable under general civil service law can

---

<sup>1</sup> See 38 U.S.C. 4303(4)(A)(ii), (5), 4313, 4314.

<sup>2</sup> See 38 U.S.C. 4314(a), (c).

<sup>3</sup> Pursuant to 38 U.S.C. 4303(5), 4331(b)(1), OPM’s regulations apply with regard to any “Federal executive agency,” which does not include the Library. See also 5 C.F.R. 353.102(2) (scope of application of OPM regulations).

<sup>4</sup> See 38 U.S.C. 4314(c), 4322.

<sup>5</sup> See 38 U.S.C. 4303(5), 4324.

bring a complaint before the MSPB and allege that the action was taken in violation of USERRA. A member of a bargaining unit may submit a complaint under the administrative grievance procedure.

### **Judicial**

Employees of the federal government, unlike those in the private sector, have no right to file a civil action under USERRA.<sup>1</sup>

## **Future-Effective Changes under the CAA**

Section 206 of the CAA, which applies the rights and protections of USERRA to GAO and Library employees as of one year after this study is transmitted to Congress, does not apply to GPO.<sup>2</sup>

## **EVALUATION**

### **Substantive Rights**

GPO is subject to the substantive provisions of the USERRA, which apply in the private sector and throughout the federal government, and are also made applicable under the CAA.

### **Procedures**

GPO employees may appeal certain personnel actions to the MSPB, which is totally independent of GPO management, but only if the case fits within a category that the MSPB has statutory authority to hear. GPO's administrative grievance procedure is generally available for claims that cannot be presented to the MSPB, but this procedure does not offer a process independent of GPO management. The negotiated grievance procedure is also available, provided the employee is a member of a bargaining unit.

By comparison, the CAA provides administrative procedures, including the right to an adjudicatory hearing and appeal to the independent Office of Compliance Board, for any alleged USERRA violations.

The CAA also provides the right to file a civil action, which is not available to GPO employees

---

<sup>1</sup> See 38 U.S.C. 4323.

<sup>2</sup> 2 U.S.C. 13116(a)(2)(B)-(C), (d)(2).

under the USERRA. Employees of private employers or state governments may also commence a civil action under the USERRA, or the Attorney General may commence a civil action on behalf of these employees.<sup>1</sup>

---

<sup>1</sup> See 38 U.S.C. 4323.

## **EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988 (EPPA)**

The Employee Polygraph Protection Act (EPPA) of 1988 does not apply to GPO or its employees, nor does this legislation apply to any federal employers except as made applicable by the CAA and similar law.<sup>1</sup> EPPA restricts employers' use of lie detector tests of their employees.

Section 204 of the CAA, which applies rights and protections of the EPPA to GAO and Library employees as of one year after this study is transmitted to Congress, does not apply to GPO.<sup>2</sup>

### **EVALUATION**

No rights and protections of EPPA are applicable to GPO and its employees. By comparison, the CAA makes the rights and protections of the EPPA applicable to covered employees of the legislative branch and provides administrative and judicial procedures by which employees may obtain redress in case of a violation.

---

<sup>1</sup> See Presidential and Executive Office Accountability Act, Pub .L. No. 104-331, section 414.

<sup>2</sup> 2 U.S.C. 1314(a)(2), (d)(2).

# **THE AMERICANS WITH DISABILITIES ACT OF 1990**

## **(Public Access Provisions)**

### **Substantive Rights**

Titles II and III of the ADA, which relate to public access to public services and public accommodations,<sup>1</sup> are applicable in their entirety to certain congressional instrumentalities, including GPO, under section 509 of the ADA.<sup>2</sup> The substantive provisions are described in the section of this report on GAO.

Under ADA titles II and III, the Attorney General has promulgated implementing regulations for matters other than public transportation,<sup>3</sup> and the Secretary of Transportation has promulgated regulations for public transportation matters.<sup>4</sup> GPO has stated that it is not subject to these regulations.

### **Procedures**

Section 509(2) of the ADA requires certain instrumentalities, including GPO, to “establish remedies and procedures to be utilized with respect to the rights and protections” of the ADA made applicable to GPO.<sup>5</sup> GPO has stated that it has not established remedies and procedures for visitors, guests, or patrons who may allege a violation of the public access provisions. Furthermore, the ADA public access provisions now in effect do not provide judicial processes in case of a complaint against GPO.

### **Future-Effective Provision Under the CAA**

Section 509(6) of the ADA makes the remedies and procedures of section 717 of title VII available to visitors, guests, and patrons of GPO, as well as GAO and the Library, who wish to pursue claims under the public access provisions of the ADA, effective one year after this study is transmitted to Congress. The administrative and judicial procedures to be provided under section 509(6) are described in the portion of this study on GAO.

---

<sup>1</sup> Sections 201-245 and 301-309 of the ADA, 42 U.S.C. 12141-12165, 12181-12189.

<sup>2</sup> 42 U.S.C. 12209(1).

<sup>3</sup> See 42 U.S.C. 12134, 12186(b); 28 C.F.R. part 36.

<sup>4</sup> See 42 U.S.C. 12143, 12149, 12164, 12186; 49 C.F.R. part 37.

<sup>5</sup> 42 U.S.C. 12209(2).

## **EVALUATION**

The evaluation in the section of this study on GAO applies as well for GPO. In general terms, section 509(6) establishes a process under which a visitor, guest, or patron may pursue a complaint individually through an administrative complaints process administered by the agency and then, if not satisfied, may file a civil action in district court.

The CAA does not provide a visitor, guest, or patron of GPO the right to file a civil action or to pursue an administrative remedy on his or her own. Instead, the CAA adopts an enforcement-based process. An individual may file a charge with the General Counsel of the Office of Compliance, who investigates and may pursue an administrative complaint on the individual's behalf.



## **CONCLUSIONS**

### **Substantive Rights**

GPO employees currently are granted substantive rights under most CAA laws, and, in addition, enjoy many of the substantive civil service protections that apply generally in the executive branch. Consequently, employees at the instrumentality have certain rights and protections beyond those afforded legislative branch employees covered by the CAA. However, the CAA does not extend substantive rights under EPPA and the WARN Act to GPO, as it does to GAO and the Library.

Furthermore, the terms of the Kiess Act, which state that GPO may grant time off from duty instead of overtime pay for overtime work to an employee paid on an annual basis, appear inconsistent with the terms of the Fair Labor Standards Act, which require that covered employees be paid for all hours over 40 in a workweek at a rate not less than one-and-one-half times the employee's regular rate of pay.

### **Administrative Processes**

Administrative procedures administered by GPO, by executive branch agencies, or established under collective bargaining agreements are available to resolve GPO employees' complaints and grievances on a wide range of subjects. GPO employees can submit claims and appeals to executive branch agencies (EEOC, MSPB, OPM) in a number of areas — including discrimination complaints, appealable adverse actions and performance-based actions, and FLSA disputes. This protection is in some respects broader in scope than the CAA, which allows appeals to the Office of Compliance Board only under the specific laws covered by the Act. One exception is that, under the ADA as amended by the CAA, claims of discrimination on the basis of disability may not be appealed administratively outside of GPO.<sup>1</sup>

GPO employees are also afforded the benefit of investigatory, enforcement, and oversight authorities of the EEOC and the Special Counsel in various subject areas, as well as the investigatory functions of GPO's EEO Service, which significantly exceed the investigation, enforcement, and oversight provided under the CAA. However, GPO is not subject to the investigatory or enforcement authority of any outside agency in the occupational safety and health area.

### **Judicial Processes and Relief**

Judicial procedures available to GPO employees are generally comparable to rights available to covered Congressional employees under the CAA, but certain gaps remain. In addition to EPPA and WARN, which do not apply at GPO at all, the substantive rights under FMLA and USERRA apply but may not be enforced by civil action. Furthermore, under certain applicable laws the

---

<sup>1</sup> Section 509(5) of the ADA, 42 U.S.C. 12209(5), as added by section 201(c)(3)(E) of the CAA.

right to jury trial and to recover certain kinds of relief are not available to GAO employees. For example, GAO employees, like executive branch employees, arguably may not request a jury trial in cases under the ADEA, EPA, or FLSA, and may not recover compensatory damages under 42 U.S.C. 1981 or liquidated damages under the ADEA.

### **Independent Process for Issuing Substantive Regulations**

GPO is generally subject to the same government-wide regulations as are employing agencies in the executive branch.

The study also identified several issues regarding GPO that warrant further discussion:

### **OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

Although GPO must establish and maintain a comprehensive occupational safety and health program consistent with the OSHA standards promulgated by the Secretary of Labor, it is not now subject to inspection or enforcement by any outside agency. One year after this study is transmitted to Congress, inspection and enforcement procedures under section 220 of the CAA will become effective for GAO and the Library. However, GPO is not included under the coverage of this section.

A union of GPO employees suggested that this study should investigate whether OSHA enforcement responsibilities should apply to GPO, and questioned whether GPO should be excluded from the OSHA provisions of the CAA. However, GPO has commented that, inasmuch as GPO's performance and compliance record has been found in a 1992 GAO report to be better than the average federal or private operation, it is unnecessary to extend additional OSHA statutory coverage to the agency at this time. GPO further explained that any additional coverage would require limited staff to devote time and energy to administrative requirements, thereby likely reducing GPO's ability to fully protect its employees.

### **EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA)**

### **WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)**

### **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

The rights and protections of the EPPA and WARN do not apply to GPO employees. Employees at GPO are granted substantive rights under USERRA, but may neither enforce those rights through a claim to the Special Counsel or the MSPB, as executive branch employees can, nor sue in district court, as private sector employees can. A union of GPO employees suggested that this study should investigate whether GPO should be included under CAA provisions with respect to these laws.

GPO commented that it has no requirement for lie detector tests and does not anticipate the need for their future use for employment purposes, and therefore sees no benefit from including the

agency under the EPPA. However, extending the EPPA provisions of the CAA to cover GPO would impose no burden or inconvenience so long as the agency sees no need for the use of lie detector tests for employment purposes, but could protect employees should the agency ever change its policy and seek to use such tests. On the other hand, GPO has no objection to being included in the USERRA provisions.

GPO also stated that it is not averse to being covered by the provisions of the WARN Act, but believes that extending the legislation to GPO would add no benefit to employees and merely duplicate or conflict with existing rights and protections under OPM's government-wide RIF regulations, which apply to GPO, and under GPO's collective-bargaining obligations. It should be noted, however, that application of the WARN Act provisions of the CAA would entitle GPO employees to seek a remedy through civil action and to request a jury trial. These district court remedies would not otherwise be available to GPO employees given legally insufficient notice of a layoff.